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9 HUMANE SOCIETY SILICON VALLEY

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

LEE JACKSON and KENNETH JACKSON, Case No: C07 05667 RS

Plaintiff,

v.

SILICON VALLEY ANIMAL CONTROL  
AUTHORITY; CITY OF SANTA CLARA;  
CITY OF CAMPBELL; HUMANE  
SOCIETY SILICON VALLEY and DOES 1  
TO 20,

Defendant.

HUMANE SOCIETY SILICON  
VALLEY RESPONSE AND  
OBJECTIONS TO PLAINTIFFS'  
DECLARATION OF STUART M.  
WILSON IN SUPPORT OF REQUEST  
FOR DENIAL OR CONTINUANCE  
OF SUMMARY JUDGMENT UNDER  
RULE 56 (f)

DATE: September 3, 2008  
TIME: 9:30 a.m.  
ROOM 4 (5<sup>th</sup> floor)  
JUDGE: Hon. Richard Seeborg  
Trial Date: January 26, 2009

HUMANE SOCIETY SILICON VALLEY ("the HUMANE SOCIETY") objects to  
the late filed declaration of plaintiffs' counsel. Opposition was due 21 days before the  
hearing date (Local Rules 7-3, 56.1.) Plaintiff' declaration was filed on August 28, 2008,  
only 6 calendar days before the hearing. That is two weeks late.

No good cause exists for the late filing. This Court held a case management  
conference *after* both the HUMANE SOCIETY and SILICON VALLEY ANIMAL

1 CONTROL AUTHORITY had filed their respective motions for summary judgment. The  
2 pending motions were mentioned at the CMC; plaintiffs' counsel was silent and did not  
3 mention that his clients needed more time to respond.

4 Rule 56(f) provides, in pertinent part:

5 "If a party opposing the motion shows by affidavit that, **for**  
6 **specified reasons**, it cannot present facts essential to justify its  
7 opposition, the court may...." (Emphasis added).

8  
9 The declaration of plaintiffs' counsel does not even come close to meeting the  
10 specificity requirement. Counsel states that "the transcripts will show actions by the  
11 officers *which will assist* Plaintiffs in opposing the motions...." (Wilson declaration, 2:2-  
12 4, emphasis added.)

13 In paragraph 5 of the same declaration, plaintiffs' counsel opines that "I believe  
14 that the information outlined above will raise a genuine issue of material fact...." (Wilson  
15 declaration 2:17-18.) That is hardly a "fact."

16 In *Tatum f. City and County of San Francisco* (2006) 441 F.3d 1090, the Ninth  
17 Circuit upheld the denial of plaintiffs' request for a continuance in an excessive force case.  
18 Applying an abuse of discretion standard, the appellate court held that because plaintiff  
19 failed to provide specific facts justifying a continuance, "the district court did not abuse its  
20 discretion in denying her request for a continuance." (*Id.*, at 1100.)

21 Just as is the case here, the *Tatum* plaintiff's declaration simply stated counsel had  
22 not yet received officers' deposition transcripts. Moreover, just as is the case here, "the  
23 declaration does not, however, refer to any specific fact in these depositions or explain  
24 why the information contained in them was 'essential to justify Tatum's opposition.' "  
25 (*Ibid.*, internal brackets omitted.)


26  
27 The declaration by the Jackson's attorneys fails for the same reasons as the reason  
28 the declaration by *Tatum's* counsel did.

1 This court should reject Mr. Wilson's late filed and without substance declaration,  
2 and grant the motions.

3 DATED: August 29, 2008

JOSEPH COSTELLA & ASSOCIATES

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6 By:

  
Harry C. Gilbert  
Attorneys for Defendant  
HUMANE SOCIETY SILICON VALLEY

**CERTIFICATE OF SERVICE**

FRCP, Rule 5

Re: *Jackson v. Silicon Valley Animal Control Authority, et al.*  
U. S. District Court Case No. C-07-05667 RS

I am a citizen of the United States and am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. I am employed by Joseph Costella & Associates and my business address is 215 Lennon Lane, Suite 200, Walnut Creek, California, 94598. On the date below, I served the following document in the manner indicated on the below-named parties and/or counsel of record:

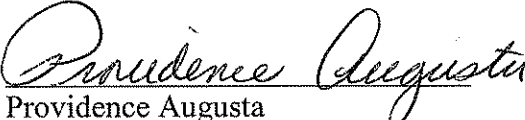
**DEFENDANT HUMANE SOCIETY SILICON VALLEY'S RESPONSE AND  
OBJECTIONS TO PLAINTIFFS' DECLARATION OF STUART M. WILSON IN  
SUPPORT OF REQUEST FOR DENIAL OR CONTINUANCE OF SUMMARY  
JUDGMENT UNDER RULE 56(f):**

**(by ELECTRONIC FILING)** as required by the Court's Order re: Electronic Service of Pleadings in this matter, and as performed by ECF/PACER on all parties in this action.

*See Service List provided by ECF/PACER*

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on August 29, 2008, at Walnut Creek, California.

DATED: August 29, 2008

  
Providence Augusta